IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE FOURTH DAY OF OCTOBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MS JUSTICE G.ROHINI

WRIT PETITION NO : 15733 of 2004

Between:

M.Kanikireddy, s/o Soma Reddy,
Kattakindapalli, H/o Akepadu Village, Rajam Mandal, Kadapa District.

..... PETITIONER

AND

1 The District Collector, Kadapa District.
2 The District Level Committee (Sand), Kadapa reptd., by its Chairman.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue order, direction or any appropriate writ more particularly in the nature of writ of mandamus, declaring the telegraphic proceedings of the 1st respondent authority dated 21-08-2004 directing the petitioner to stop the mining, as arbitrary, illegal, null and void and is against the principles of natural justice and norms of the public policy and contrary to the G.O.Ms.No.1 dated 01-01-2001 and to set aside the same

Counsel for the Petitioner : MR. VENKATESWARA RAO GUDAPATI

Counsel for the Respondents : GP FOR PANCHAYAT RAJ

The Court made the following :

THE HON'BLE MS. JUSTICE G.ROHINI

-

WRIT PETITION NO.15733 OF 2004

ORDER :

The petitioner seeks a declaration that the telegraphic orders issued by the first respondent District Collector, Kadapa dated 21-08-2004 directing the petitioner to stop the sand mining at once as arbitrary and illegal.

The petitioner was granted lease of sand quarrying in respect of Mandaram quarry for a period of one year from 1-1-2004 to 31-12-2004 vide proceedings of the 2nd respondent – District Level Committee (sand), Kadapa, dated 08-12-2003. The petitioner states that he has paid the lease amount for the entire period and has been lifting the sand as per the terms and conditions of the lease deed. While so, in the month of May, 2004 the lifting of sand from six quarries including Mandaram quarry was banned due to shortfall in the rains which resulted in depletion of

groundwater. Subsequently, the District Collector, Kadapa issued proceedings dated 24-06-2004 stating that the District has received rainfall of 780.9 mm out of normal 700 mm and on an average there is a rise in the groundwater level in the District and accordingly basing on the recommendation of the Deputy Director, Ground Water Department, Kadapa, permission was accorded for lifting the sand from six sand quarries which includes Mandaram quarry. Thereafter, the impugned telegraphic orders dated 21-08-2004 were issued by the 1st respondent – District Collector stating that as per the directions of the Chief Minister of A.P., the orders dated 24-06-2004 are cancelled and that the petitioner should stop the sand mining at once and return the way bills failing which disciplinary action will be initiated. The said proceedings are under challenge in this writ petition.

The contention of the petitioner is that the impugned proceedings are without jurisdiction since the power to cancel the quarry lease is vested with the District Level Committee alone in terms of the provisions of G.O.Ms.No1, dated 1-1-2001. The further contention is that the impugned order which was issued unilaterally without there being any prior notice to the petitioner is in violation of the principles of natural justice. It is also contended that since on the basis of the report of the Ground Water Committee the ban on the sand quarrying was already lifted on 24-06-2004, the impugned proceedings issued at the instance of the Chief Minister without consulting the Ground Water Committee is arbitrary, illegal and not bona fide.

On behalf of the respondents, the District Panchayat Officer, Kadapa filed a counter-affidavit stating that as suggested by the Deputy Director, Ground Water Department, Kadapa permission was accorded for quarrying the sand in respect of six quarries including Mandaram sand quarry by the District Collector by proceedings dated 24-06-2004. However, the impugned telegraphic orders were issued to avoid depletion of ground water and therefore the same cannot be held to be bad for want of prior notice. It is also stated that the villagers of Mandaram gave some representations to the Chief Minister when he visited Kadapa on 16th and 17th August, 2004 and on the basis of the same, the Chief Minister keeping in view the public interest directed the District Collector to take steps where it is affecting ground water level. Accordingly, the District Collector, Kadapa vide note dated 19-08-2004 directed the District Panchayat Officer to take necessary action. Consequently the impugned cancellation order dated 21-08-2004 was issued on the ground of the depletion of ground water and keeping in view the public interest and therefore the same does

not warrant any interference.

I have heard the learned Counsel for the petitioner and the learned Government Pleader for Panchayat Raj appearing for the respondents.

At the outset, it is to be noted that the grant of lease of sand bearing areas in the State is governed by a detailed procedure prescribed under Rule 9–B of A.P. Minor Mineral Concession Rules, 1966 as substituted under G.O.Ms.No.1, Industries and Commerce Department, dated 1-1-2001. It is clear from the said rules that the District Level Committee is the competent authority not only to grant or terminate the lease but also to decide any matter or problem arising during the course of the implementation of the rules. It is not in dispute that the petitioner was granted the lease for one year in respect of Mandaram quarry by the District Level Committee, Kadapa by proceedings dated 08-12-2003. However, under the impugned telegram, the grant of lease under the proceedings dated 8-12-2003 has not been cancelled, but the subsequent proceedings dated 24-06-2004 issued by the District Collector lifting the ban on sand quarrying and according permission for lifting the sand has been cancelled. Hence, I am unable to agree with the contention of the learned Counsel for the petitioner that the impugned order is without jurisdiction since it does not appear to have the effect of cancelling the lease granted by the District Level Committee. However, the learned Counsel for the petitioner further contends that the impugned telegraphic order which is not based on any report from the Ground Water Department is unwarranted and not justified.

The proceedings dated 24-06-2004 shows that a report was obtained from the Deputy Director, Ground Water Department and on the basis of the recommendations made therein, permission was accorded for lifting the sand at Mandaram quarry along with five other similarly situated quarries. If that be so, even assuming that subsequent representations are received from the villagers complaining that there is depletion of ground water and the sand quarrying cannot be permitted, the 1st respondent ought to have referred the matter to the Ground Water Department before passing the impugned order. As rightly contended by the learned Counsel for the petitioner, the impugned order by virtue of which the petitioner has been restrained from carrying on the quarrying operations adversely affects the rights acquired by the petitioner under the lease granted on 08-12-2003. Hence, the first respondent is not justified in issuing the impugned telegraphic order

unilaterally without even ascertaining the existing ground water levels in consultation with the Ground Water Department.

In the circumstances, the Writ Petition is disposed of setting aside the impugned order dated 21-08-2004 and leaving it open to the respondents to take the appropriate proceedings, if the circumstances so warrant, following due process of law. No costs.

_____

4th October, 2004.

gbs

To

1 The District Collector, Kadapa District.
2 The District Level Committee (Sand), Kadapa reptd., by its Chairman.

3.2CCs to G.P. for Panchayat Raj, High Court of AP Bldgs, Hyderabad (OUT)

4.2CD copies